

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2015090102

ORDER GRANTING MOTION TO  
DISMISS WITHOUT PREJUDICE

On December 3, 2015, District filed a “Renewed Jurisdictional Motion to Dismiss” on the grounds Mother has no legal standing to represent Student in this due process hearing because Father holds sole legal and sole physical custody of Student. OAH denied District’s previous motion to dismiss based on similar grounds during a prehearing conference on November 19, 2015. The record reflects the motion was denied without prejudice.

APPLICABLE LAW

Parents have the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

For purposes of the IDEA, the term parent means a biological or adoptive parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. (20 U.S.C. § 1401(a)(23); 34 C.F.R. §300.30(a) (2006).) When a judicial decree or order identifies a specific person or persons as having authority to make educational decisions on behalf of a child, that person is determined to be the parent for the purposes of the IDEA. (34 C.F.R. § 300.30(b) (2006).) In a situation where the parents of a child are divorced, the parental rights established by the IDEA apply to both parents, unless a court order or state law specifies otherwise. (*Analysis of Comments and Changes to 2006 IDEA Part B Regulations*, 71 Fed. Reg. 46568 (August 14, 2006).)

In California, under Family Law section 3006, “‘sole legal custody’ means that one parent shall have the right and responsibility to make the decisions relating to health, education, and welfare of a child.”

## DISCUSSION

Mother filed a request for due process on behalf of Student on August 19, 2015. On October 2, 2015, at Mother's request and with District's agreement, the due process hearing was continued to November 17 and 18, 2015.

On November 5, 2015, the Superior Court for the County of Orange entered a minute order in family law matter 10D006720 finding it was in [Student's] best interest to award sole legal and sole physical custody of Student to Father. The court also found it was in [Student's] best interest to limit Mother's parenting time to 4 hours of supervised visitation per week until further order of the court. The minute order provided "if and/or when" Mother obtained a medical evaluation as specified in the order; she was to submit it to the court for further consideration.

The minute order here does not specifically address Mother's educational rights. However, in light of the plain language of Family Law section 3006, as of November 5, 2015, Mother no longer had the right or the authority to make the decisions relating to Student's health, education and welfare, which would be required to prosecute this case. Accordingly, District's motion to dismiss will be granted without prejudice to Mother's right to file a due process request if and/or when the family law court issues an order that grants her those rights.

## ORDER

1. District's Motion to Dismiss is granted.
2. All dates are vacated.

DATE: December 10, 2015

/s/

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MARIAN H. TULLY  
Administrative Law Judge  
Office of Administrative Hearings